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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,034	01/12/2005	Jae-Kun Lee	1234-11	6623
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Paul J Farrell Dilworth & Barrese 333 Earle Ovington Boulevard Suite 702 Uniondale, NY 11553				
			EXAMINER	
			RUNNING, RACHEL A	
ART UNIT		PAPER NUMBER		
3732				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,034

Applicant(s)

LEE, JAE-KUN

Examiner

RACHEL A. RUNNING

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamamoto et al. (US 2001/0040173).

Yamamoto et al. disclose a dye-containing space (21) being defined in a thin resin film (22), the thin resin film being easily collapsible, and at least one mouth disposed outside the dye-containing space the hair dye being discharged through the mouth (see Figures 4 and 5; paragraph 23). The dye-containing space further comprises at least one hole (27) formed on the outside (paragraph 0023).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittou (US 6,012,462) in view of Yamamoto et al (US 2001/0040173) and Sigmund et al. (US 4,592,376).

Schmittou discloses a hair-dyeing device comprising a main body (6) having a power source, a dye inlet port, and a comb assembly (4) attached to the main body (see Figure 1; column 2, lines 15-25). The comb comprises a plurality of tines; each tine has at least one flow channel (see Figure 2). A pump (5) is used for supplying the dye contained in the dye container to the tines (see Figure 1). An intermediate plate is attached to the port formed in the main body (see Figure 1). Schmittou does not disclose the dye containers being a thin resin film with at least one hole formed at the outside of the dye container, and the main body having a motor.

Yamamoto et al. teaches a dye-containing space (21) being defined in a thin resin film (22), the thin resin film is easily collapsible, and has one mouth that is adapted so the dye is discharged through the mouth (see Figures 4 and 5). The dye-containing space further comprises at least one hole (27) formed on the outside (paragraph 0023). Sigmund et al. teaches a hair-dyeing device comprising an electric motor (50) source to power the pump (16) (see Figure 9; column 6, lines 15-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hair dyeing device of Schmittou with the dye containers as taught by Yamamoto et al. in order to create negative pressure within the bag to discharge the dye at any position of the container. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hair dyeing device of Schmittou with a motor for the power supply as taught by Sigmund et al. in order to operate the pump automatically.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittou (US 6,012,462) in view of Yamamoto et al (US 2001/0040173) and Sigmund et al. (US 4,592,376) as applied to claim 3 above, and further in view of Cheung (US 5,755,241).

The combination of Schmittou, Yamamoto et al., and Sigmund et al. disclose the claimed invention except for the comb assembly being pivotally attached to the main body.

Cheung teaches a hair-dyeing device with a pivotal comb (16) mounted to the body (see Figure 2; column 3, lines 43-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Schmittou with the pivotal comb as taught by Cheung in order to position the comb at different angles relative to the body and the user's head.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittou (US 6,012,462) in view of Yamamoto et al (US 2001/0040173) and Sigmund et al. (US 4,592,376) as applied to claim 3 above, and further in view of Rudick (US 4,826,046).

The combination of Schmittou, Yamamoto et al., and Sigmund et al. disclose the claimed invention except for the pump being mounted in the main body as a multi channel pump.

Rudick teaches a multi channel pump that is used for post mixing (see Figure 1(a); column 1, lines 55-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pump of Schmittou a multi channel pump as taught by Rudick in order to allow the hair dye to be post mixed.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittou (US 6,012,462) in view of Yamamoto et al (US 2001/0040173) and Sigmund et al. (US 4,592,376) as applied to claim 3 above, and further in view of Turner (US 4,792,250).

The combination of Schmittou, Yamamoto et al., and Sigmund et al. disclose the claimed invention except for a valve mounted in each of the flow channels.

Turner teaches a valve (208) mounted in each of the flow channels to control the amount of fluid dispensed through the valve (column 8, lines 35-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Schmittou with a valve mounted in each of the flow channels as taught by Turner in order to control the amount of liquid dispensed through the channels.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittou (US 6,012,462) in view of Yamamoto et al (US 2001/0040173) and Sigmund et al. (US 4,592,376) as applied to claim 3 above, and further in view of Kornides (US 5,297,882).

The combination of Schmittou, Yamamoto et al., and Sigmund et al. disclose the claimed invention except for a plurality of dispensers disposed between the pump and the comb for uniformly distributing the dye supplied by the pump, and wherein each of the dispensers has a plurality of rotors arranged on the same shaft.

Kornides teaches a plurality of dispensers wherein each of the dispensers has a plurality of rotors (26) arranged on the same shaft (22) (see Figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made

to provide the device of Schmittou with a plurality of dispensers wherein each of the dispensers has a plurality of rotors arranged on the same shaft as taught by Kornides in order to allow for uniform distribution of the hair dye product.

Response to Arguments

8. Applicant's arguments filed January 2, 2008 have been fully considered but they are not persuasive.

9. In response to applicant's argument that Yamamoto et al. fail to disclose the limitation of the hair dye being discharged through the at least one mouth by an outside negative pressure applied at the at least one mouth, Yamamoto et al. disclose all the structural limitations of the dye container. The intermediate process of the dye being discharged through the mouth an outside negative pressure applied to the mouth, does not give weight to an article claim since all the structural limitation has been met, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

10. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL A. RUNNING whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732

/Rachel A. Running/
Examiner
Art Unit 3732

3/20/2008